



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCB/160066

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 22, 2014, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Washington County Department of Social Services in regard to Child Care, a hearing was held on September 25, 2014, at West Bend, Wisconsin.

The issue for determination is whether the Washington County Department of Social Services (the agency) correctly terminated the Petitioner's child care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Julie Williamson, Economic Support Lead Worker  
Washington County Department of Social Services  
333 E. Washington Street  
Suite 3100  
West Bend, WI 53095

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.

2. On August 18, 2014, the agency sent the Petitioner a Notice of Eligibility Child Care, advising the Petitioner that her child care benefits would be ending on August 31, 2014, because her household income was over the program limit. (Exhibit 7)
3. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 22, 2014. (Exhibit 1)
4. Petitioner's household consists of four people. (Exhibit 8)
5. Petitioner's gross household income consists of earned income from her job and her husband's jobs, which the agency calculated as \$4,345.15 per month, using a 4.3 week month for child care purposes. (Exhibits 4, 5, 6 and 10; *see on-line process help manual §16.4.3*)
6. The agency allowed a deduction of \$146.59 per month for child support paid by Petitioner's husband. (Exhibit 11)

### **DISCUSSION**

In order for initial applicants to be eligible for Child Care benefits, household income must be below 185% of the Federal Poverty Limit (FPL). *Wisconsin Shares Child Care Assistance Manual (CCM)* §1.6.2 For on-going eligibility, income cannot exceed 200% FPL. *CCM* §1.6.3 Income is evaluated on the basis of prospectively budgeted gross monthly income. *Id.* at §1.6.6

This case concerns on-going benefits. (See Exhibit 9) As such, in order for Petitioner to be eligible for continued benefits, her household income needed to be at or below 200% FPL, which for an assistance group size of 4, is \$3926 per month. See <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>

In the case at hand, the Petitioner did not dispute the income information reflected in Exhibits 4, 5, and 6), but Petitioner expressed two different concerns at the hearing. First, the Petitioner testified that she did not think the agency correctly determined the amount of child support that her husband needed to pay each month. Second, the Petitioner argued that it was unfair for the agency to base its eligibility determination on gross income.

With regard to child support paid out by Petitioner's husband, it may not be used as a deduction from income in calculating gross income. *CCM* §1.6.4 explicitly states, "Do not subtract child support paid out."<sup>1</sup> As such, the income calculated by the agency was lower than it should have been, because it erroneously allowed a deduction for child support paid out by the household.

With regard to Petitioner's argument concerning the fundamental fairness of applying the rules to her and using gross income to determine eligibility, there is no jurisdiction to address the merits of that argument.

Petitioner's argument is equitable in nature, but Administrative Law Judges do not possess equitable authority and must apply the law as it is written. (See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] (Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates.[citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). "No proposition of law is better established than that administrative agencies have only such powers as are expressly granted to them or necessarily implied and any power sought to be exercised must be found within the four corners of the statute under which the agency proceeds." *American Brass Co. v. State Board of Health*, 245 Wis. 440, 448 (1944); see also, *Neis v. Education Board of Randolph School*, 128 Wis.2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985).

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<sup>1</sup> Conversely, child support payments below \$1,250 per month, that are received by an applicant, are not counted as income under *CCM* §1.6.11

### **CONCLUSIONS OF LAW**

The agency correctly terminated the Petitioner's child care benefits.

**THEREFORE, it is**

**ORDERED**

The Petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

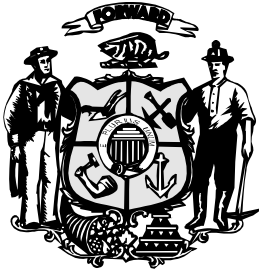
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of October, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 14, 2014.

Washington County Department of Social Services  
Child Care Benefits